No. 85-193 (4)

In the Supreme Court of the United States

OCTOBER TERM, 1985

Supreme Court, U.S.
FILED
SEP 11 1985
JOSEPH F. SPANIOL, JR.
CLERK

U.S. TRUST CORPORATION, PETITIONER

v.

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM AND FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the court of appeals erred in ruling that the Board of Governors of the Federal Reserve System should have denied a bank holding company's application to expand the activities of its Florida subsidiary despite the fact that the subsidiary met only the first part of the two-part definition of a "bank" under the Bank Holding Company Act.

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STATEMENT OF INTEREST

The Solicitor General files this brief on behalf of the Board of Governors of the Federal Reserve System, as respondent on the petition for certiorari, and on behalf of the United States, as *amicus curiae*. At issue are the limitations imposed by the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*, on interstate banking. The United States' interest in this dispute arises from its responsibilities, through

the Department of the Treasury and the Office of the Comptroller of the Currency, for the chartering and regulation of various banking and financial service institutions. The issues presented in this case are related to questions presented in *Board of Governors* v. *Dimension Financial Corp.*, cert. granted, No. 84-1274 (April 29, 1985). The United States has filed a brief *amicus curiae* in that case supporting affirmance. The Federal Reserve Board and the United States hold differing views in this case as well. The views of the Board (pages 5-9, *infra*) and the views of the United States (pages 9-16, *infra*) are set forth separately herein.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is reported at 760 F.2d 1135. The order of the Board of Governors of the Federal Reserve System (Pet. App. A18-A25) is reported at 70 Fed. Res. Bull. 371 (1984).

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1985. The petition for a writ of certiorari was filed on August 5, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner, U.S. Trust Corporation, is a bank holding company located in New York. In 1981, it received authorization from the Federal Reserve Bank of New York (on behalf of the Federal Reserve Board) and the Florida Department of Banking and Finance to establish U.S. Trust Company of Florida, a nondepository subsidiary. In 1983, it sought

approval from the Federal Reserve Board, pursuant to Section 4(c)(8) of the Bank Holding Company Act (BHCA), 12 U.S.C. 1843(c)(8), to expand its Florida subsidiary's "non-bank" activities to include the acceptance of demand deposits and the making of consumer loans (Pet. App. A18). Petitioner also expressed an intention to convert the Florida subsidiary into a nationally chartered institution and to obtain federal insurance from the Federal Deposit Insurance Corporation (*id.* at A19). The Board agreed with petitioner that these new activities would not transform the Florida subsidiary into a "bank" for purposes of the BHCA because the subsidiary would not engage in the business of making commercial loans (*id.* at A19-A20).[1] Thus, the Board approved the application with certain express conditions to insure that the subsidiary did not engage indirectly in commercial lending (*id.* at A23). The Board also stated its view that Congress should consider changes in the BHCA that would specifically address regulation of institutions that presently are not banks within the meaning of the Act (*id.* at A22). One member dissented from the decision. (*id.* at A24).

2. The Florida Department of Banking and Finance, the Florida Bankers Association, the Conference of State Banking Supervisors and Sun Bank/Palm Beach, petitioned the United States Court of Appeals for the Eleventh Circuit, pursuant to 12 U.S.C. 1848, for review of the Board's order. They claimed

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[1] Section 2(c) of the BHCA defines a "bank" in pertinent part as an institution that "(1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans." 12 U.S.C. 1841(c).

that the subsidiary was subject to the Act's limitations on interstate banking, even though the subsidiary did not meet the BHCA's two-part definition of a bank. The court of appeals agreed and reversed the Board's decision (Pet. App. A1-A17).

The court of appeals first dismissed the commercial lending requirement contained in the Act's definition of "bank," see 12 U.S.C. 1841(c)(2), characterizing it as a mere "technical amendment" intended to benefit a single institution (Pet. App. A9-A10, A13). The court then examined the purposes of the BHCA. It stated that the Act was intended to prevent undue "concentrat[ion] [of] banking facilities within a particular area" and abusive credit practices between a holding company and its subsidiaries (*id.* at A11). In the court's view, the Act, and in particular the so-called "Douglas Amendment," 12 U.S.C. 1842(d), was also intended "to prohibit the creation of interstate deposit-taking networks by bank holding companies without specific state authorization" (Pet. App. A11). The court concluded that the Act's definition of a bank should not be applied literally in the present case because it would infringe Florida's right, as expressed in the Douglas Amendment, to control an out-of-state bank holding company's introduction of a deposit-taking institution within the state's borders (*id.* at A12-A13). The court of appeals concluded that, because the Board's approval of petitioner's application would violate what the court found to be the policy of the Douglas Amendment, the Board should have invoked its power under Section 5(b) of the Act, 12 U.S.C. 1844(b),[2] to deny

[2] Section 5(b) of the BHCA authorizes the Board "to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of the Act and prevent evasions thereof." 12 U.S.C. 1844(b).

petitioner's application (Pet. App. A15-A16). Accordingly, the court of appeals reversed the Board's order (Pet. App. A17). The Board did not seek review of the court's decision.

RESPONSE OF THE RESPONDENT FEDERAL RESERVE BOARD

This case presents issues that are closely related to issues now before the Court in *Board of Governors* v. *Dimension Financial Corp., supra.* This case and *Dimension* involve sharply divergent conclusions with respect to the scope of the Board's authority under Section 5(b) of the BHCA to carry out and prevent evasions of the purposes of the Act.

The evasion at issue, both here and in *Dimension,* is the claim by so-called "nonbank banks" that they can avoid treatment as banks under the Act by declining to receive demand deposits or to make commercial loans, the two functions described in the Act's definition of "bank." 12 U.S.C. 1841(c). If these institutions are not banks under the Act, the companies that own them can avoid the restrictions of the Act against conflicts of interests, concentration of resources, and excessive risk. See 12 U.S.C. 1842-1843; 1971-1978.

Here, the Eleventh Circuit held that the Board is required to use its authority under Section 5(b) to deny approval of the proposed acquisition by a bank holding company of a bank in another state that would accept demand deposits but that would not make commercial loans. In *Dimension,* the Tenth Circuit held that the Board lacks broad authority under Section 5(b) to define the elements of the Act's definition of bank in order to bring certain nonbank banks within the scope of the Act.

Specifically, at issue in *Dimension* are regulatory provisions issued by the Board defining the terms "demand deposits" and "commercial loans" for purposes of Section 2(c) of the BHCA (12 C.F.R. 225.2(a)(1)(A) and (B)). The Board issued these provisions in express reliance on its authority under Section 5(b) of the Act. In particular, the Board found that the proliferation of institutions seeking to avoid the Act's coverage by relying on a narrow construction of the elements of the Act's definition of bank would, among other things, permit expansion of banking across state lines without either state or congressional authorization, a result that is contrary to the purposes of the Douglas Amendment to the Act (12 U.S.C. 1842(d)), which is intended to avoid the concentration of resources and to preserve state control over banking services within the state. Pet. App. A20-A61; *Board of Governors* v. *Dimension Financial Corp., supra.* However, in invalidating the Board's regulatory definitions, the Tenth Circuit erroneously ruled that the Board's authority to prevent evasions of the Act "is to be exercised in a restricted area" and is limited "basically to anticompetitive considerations" (744 F.2d at 1408).

In contrast, in the decision at issue here, the court of appeals held that U.S. Trust's proposal to establish U.S. Trust Company as a deposit-receiving national bank across state lines without state authorization was an evasion of the purposes of the Act. The court of appeals reasoned that one of the purposes of the BHCA, evidenced in the provisions of the Douglas Amendment, was to limit the creation of interstate networks of deposit-taking institutions by bank holding companies and also to preserve state control over bank expansion (Pet. App. A11-A12). The court below

found that since the amendment to the BHCA's definition of bank that added the commercial loan test was understood to apply to only a single institution, and since there is no evidence in the legislative history that Congress intended the commercial loan test of "bank" to alter the basic policies underlying the Douglas Amendment, U.S. Trust's proposal to establish a deposit-receiving bank across state lines would frustrate one of the basic objectives of the legislation (*id.* at A11-A16).

The petition for certiorari in this case should be held for disposition pending this Court's decision in the *Dimension* case, since the resolution of the question presented here is very likely to be affected by this Court's decision in *Dimension*. The court of appeals' decision here involves a broad interpretation of the Board's authority under the BHCA to prevent evasions of the Act, in contrast to the narrow construction of this same authority at issue in *Dimension*. Moreover, the Court's disposition in *Dimension* of arguments concerning the nature and scope of the legislative objectives underlying the Act, as well as the intended scope of the statutory provisions affecting institutions that deliberately decide not to receive demand deposits or to make commercial loans, may well have a significant impact on the issues presented here. The Eleventh Circuit's decision, as noted above, is based on these factors. Indeed, the Eleventh Circuit expressly recognized the interrelationship of the issues in the two cases, finding that the language of the two opinions to some extent is in conflict (Pet. App. A14 n.15).

In addition, the Board, the agency charged with administration of the Act (see *Board of Governors* v. *First Lincolnwood Corp.*, 439 U.S. 234, 250 (1978)), whose views on the meaning of the Act are

entitled to deference (see *Board of Governors* v. *Investment Company Institute*, 450 U.S. 46, 56 (1981)), has not formally addressed the issues raised by the Eleventh Circuit's opinion.[3] The Court's decision in *Dimension* would provide the basis for the Board's review of the policy and legal implications of the broad interpretation of the Board's authority at issue here.[4] Moreover, deferral of the petition here

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[3] The applicability of the rationale of the Eleventh Circuit's decision may depend on the circumstances of particular cases. It has been held, for example, that where, based on the circumstances involved, it is found that a banking institution has structured its activities in a manner that evades the purposes of the Act, the institution's compliance with the literal terms of the bank definition is not determinative of whether the Act applies. *Wilshire Oil Co.* v. *Board of Governors*, 668 F.2d 732, 734-740 (3d Cir. 1981), cert. denied, 457 U.S. 1132 (1982). Thus, even if the Court were to affirm the court of appeals' ruling in *Dimension* with regard to the Board's general regulatory provisions defining for all institutions the component functions of a bank, such a decision would not necessarily forcelose a holding that a particular institution or class of institutions must be treated as banks in order to prevent the frustration of the purposes of the Act, regardless of compliance with the literal definition of bank.

[4] It is appropriate to note at this point that the court of appeals' decision here is clearly correct at least insofar as it found that the Douglas Amendment is intended to prevent bank holding companies from creating interstate banking networks without the explicit permission of the states and to apply to bank holding companies the principles of the McFadden Act (12 U.S.C. 36), which subjects the establishment by national banks of branches (defined to include any office that receives deposits, pays checks, or makes loans) to the limitations of state law. See *Northeast Bancorp* v. *Board of Governors*, No. 84-363 (June 10, 1985), slip op. 8-12. It is also true, as the decision found, that the exemption from the Act for institutions that do not engage in commercial lending

will provide for orderly judicial administration and will prevent potentially unnecessary expenditure of resources.

RESPONSE OF THE UNITED STATES AS AMICUS CURIAE

The United States believes that this Court should grant the petition for writ of certiorari. The decision raises issues of basic importance to the financial services industry by fundamentally altering the scope of the Federal Reserve Board's authority to regulate the non-banking activities of bank holding companies. The decision conflicts with this Court's precedents and is plainly wrong.

1. As the Board notes, the court of appeals' decision is related to, and partially in conflict with, *Board of Governors* v. *Dimension Financial Corp.*, cert. granted, No. 84-1274 (Apr. 29, 1985). The Board wishes to await resolution of *Dimension* before stating its views on the pending petition.[5] However,

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was meant by Congress to be narrowly construed and to have very limited application. See H.R. Rep. 91-1747, 91st Cong., 2d Sess. 23 (1970); *One-Bank-Holding Company Legislation of 1970: Hearings on S. 1052, S. 1211, S. 1664, et al. Before the Senate Comm. on Banking and Currency*, 91st Cong., 2d Sess. 137 (1970).

[5] Although the Board takes no position on whether the decision is correctly decided, it has relied on that case to support its position that "[t]he Board is authorized under section 5(b) of the Act, indeed in certain circumstances is required, to deny proposals that represent a clear evasion of the purposes of the Act, even if the proposal technically conforms to the terms of the Act." *Citicorp*, Fed. Res. Bd. Press Release (Aug. 1, 1985), slip op. 4 n.3. See also *Mark Twain Bancshares, Inc.*, Fed. Res. Bd. Press Release (Aug. 12, 1985). The Board recently opposed Control Data Corporation's acquisition of an Ohio chartered bank that makes no commercial

the United States agrees with petitioner that the decision below is wrong regardless of this Court's resolution of *Dimension*. If the Tenth Circuit's decision in *Dimension* is affirmed, the Eleventh Circuit's much more sweeping decision must, of necessity, be reversed. But even if this Court declines to affirm *Dimension*, in whole or in part, the United States maintains that the Eleventh Circuit's decision should still be reversed.

The issue in *Dimension* is whether the Board's recent amendments to Regulation Y, 12 C.F.R. Pt 225, impermissibly redefine the individual components of the BHCA's two-part definition of the term "bank." [6] The issue presented here, in contrast, is whether a court can order the Board to dispense altogether with

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loans, apparently on the basis of the Eleventh Circuit's decision. See *City Loan*, Fed. Res. Bd. Press Release (Aug. 13, 1985).

[6] Section 2(c) defines a "bank" for purposes of the Act as any institution that "(1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans." 12 U.S.C. 1841(c). The Board's amendments interpreted the first element of that definition to include acceptance of deposits that the depositor may, in practice, withdraw upon demand. 12 C.F.R. 225.2(a)(1). Under the amendments, "negotiable order of withdrawal" (NOW) accounts which, by law, are subject to an institution's right to require notice prior to withdrawal, would be treated as "demand deposits." *Ibid.* The Board also expanded the "commercial loan" element of the definition of "bank" to include the purchase of commercial paper, bankers' acceptances, brokers' call loans, retail installment loans and similar investment instruments. *Ibid.* Thus, holding companies whose subsidiaries offer NOW accounts and engage in those transactions would be treated as "banks" by the Board under the BHCA.

one-half of that two-part test. In the present case, the Board determined that U.S. Trust Company of Florida, petitioner's nonbank subsidiary, would meet the first element of the test because it would accept deposits that "the depositor has a legal right to withdraw on demand," 12 U.S.C. 1841(c)(1). But the Board concluded that the subsidiary would not meet the second necessary element because it would not "engage in the business of making commercial loans," 12 U.S.C. 1841(c)(2), even as that term is defined in the Board's amended Regulation Y. The court, relying on its evaluation of the policies behind the Act, nonetheless ordered the Board to ignore the statutory language and treat the subsidiary as a "bank." Thus, the court gave the Board more sweeping authority than the Board itself claimed to possess.

If, as we argue in *Dimension*, the Board cannot issue regulations altering the operative terms of the two-part statutory definition, it naturally follows that a court may not ignore altogether one-half of the test that Congress has ordained. But even if this Court determines in *Dimension* that the Board's redefinition of Section 2(c) is permissible, the infirmity in the present case persists. The Board's amended Regulation Y expands the operative terms of Section 2(c), but it does not dispense with either necessary element of the two-part statutory definition. Thus, if this Court concludes that *Dimension* was wrongly decided and the amended Regulation Y is, in fact, valid, it would still face the question raised in this case—whether one part of the two-part definition may be ignored.

2. Turning to the merits, the court of appeals' error is manifest. The BHCA's coverage is expressly limited to certain types of "banks." Section 2(c) un-

equivocally defines the term "bank" as an institution that accepts demand deposits and that engages in commercial lending. 12 U.S.C. 1841(c). The court nonetheless refused to apply the second element of this test because it viewed the commercial lending requirement as a "technical amendment" intended to benefit a single institution (Pet. App. A13). But that requirement, although proposed and supported by a particular trust company,[7] is plainly an express limitation of general applicability.

Prior to the adoption of the two-part test, Section 2(c) defined the term "bank" based solely on whether the institution accepted "demand deposits." See 12 U.S.C. (Supp. V 1965-1969) 1841(c). Congress added the commercial lending requirement to refine that definition because it "may be too broad and may include institutions which are not in fact engaged in the business of commercial banking in that they do not make commercial loans." S. Rep. 91-1084, 91st Cong., 2d Sess. 24 (1970). The commercial lending requirement reflects a specific congressional intention to "exclude institutions that are not engaged in the business of making commercial loans from the definition of 'bank.'" *Ibid.* Thus, the court of appeals was plainly mistaken in treating the amendment as no more than "a bit of local favoritism." Pet. App. A10 n.10.

The court justified its evisceration of the commercial lending requirement on the ground that adherence to the plain language of Section 2(c) would be

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[7] The legislative history reveals that the Boston Safe Deposit and Trust Company (Boston Safe), was a moving force behind the 1970 amendment. See Brief for the United States as Amicus Curiae at 22, *Board of Governors* v. *Dimension Financial Corp.*, No. 84-1274.

contrary to the purposes of the Act (Pet. App. A12-A13). The court failed to recognize that the BHCA reflects a weighing of competing policies. The statutory language provides the most certain indication of how Congress has struck the balance. See, *e.g.*, *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Indeed, it is altogether familiar for Congress to reconcile competing policies —here, the prevention of bank concentration and the encouragement of market-driven innovation in banking services—by drawing a line that may seem arbitrary if viewed solely from a single policy perspective. See, *e.g.*, *Dawson Chemical Co.* v. *Rohm & Haas Co.*, 448 U.S. 176, 220-223 (1980). Congress does not press every policy to the exclusion of other interests. Instead, it draws lines based on compromise. If legislative compromise is to be respected, then those lines must be observed.

The court of appeals is plainly wrong in suggesting that full application of Section 2(c)'s definition of "bank" will violate the language or spirit of the Douglas Amendment. The Douglas Amendment prohibits the Board from approving a bank holding company's acquisition "of any additional bank located outside the State" unless the foreign state's laws expressly permit the acquisition. 12 U.S.C. 1842(d). The Douglas Amendment's reach is thus limited by Section 2(c)'s definition of a "bank." The court of appeals simply ignored Section 2(c)'s unequivocal directive and assumed that an institution that met only one-half of the statutory criteria for a "bank" should nevertheless be treated as a "bank." As the Board originally concluded, the expansion of the Florida subsidiary's activities would not transform the institu-

tion into a "bank" within the meaning of the BHCA. See Pet. App. A19-A20. Thus, the Douglas Amendment poses no bar to the transformation.[8]

The court of appeals' conclusion that the Douglas Amendment was intended "to prohibit the creation of interstate deposit-taking networks by bank holding companies" (Pet. App. A11) finds no support in the amendment's legislative history. Senator Douglas, the chief sponsor of the amendment, explained that "what the sponsors of the amendment are seeking to do is to prevent an undue concentration of banking and financial power, and instead to keep the private control of credit diffused as much as possible." 102 Cong. Rec. 6857 (1956). Senator Douglas expressed specific concern about the concentration of credit resources and its contribution to the development of a concentration in manufacturing and industry. *Ibid.* But his comments cannot be read to prohibit the interstate ownership of institutions that engage in what the Act itself defines as non-banking activities.[9]

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[8] The BHCA expressly permits bank holding company ownership of non-banking entities, such as U.S. Trust Company, that are "closely related to banking." 12 U.S.C. 1843(c)(8). See 12 C.F.R. 225.25(b)(1). As this Court has noted, the Douglas Amendment places no limitation on bank holding company ownership of non-banking entities. See *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 47-48 & n.13 (1980).

[9] Indeed, Congress consciously preserved the power of bank holding companies to engage in interstate non-banking activities akin to banking. The House Committee on Banking and Currency originally rejected the Federal Reserve Board's recommendation that bank holding companies be permitted to operate non-banking businesses closely related to banking,

Thus, the court of appeals erred in concluding that the BHCA's limitations on interstate banking should be extended to financial institutions that do not engage in commercial lending. The court, disregarding the plain and unambiguous language of Section 2(c), has relied on its own notions of banking "policy" to reconstruct the Act. Clearly, it has invaded the legislative sphere. See *United States* v. *Rodgers*, No. 83-620 (Apr. 30, 1984), slip op. 8 ("Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress.").[10]

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agreeing with the Comptroller of the Currency that "a large bank holding company would be in a position to organize and control subsidiary companies in every city in the Nation * * *." See H.R. Rep. 609, 84th Cong., 1st Sess. 17 (1955). Ultimately, however, Congress permitted bank holding companies to engage in nonbanking activities closely related to banking. See 12 U.S.C. 1843(c)(8). Congress clearly did not contemplate that the prohibition on interstate acquisition of banks would limit these activities. See *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27 (1980).

[10] Likewise, the court cannot enlist the Board to rewrite the BHCA by admonishing the Board to proscribe actions, wholly permissible under the statute, through its power to "prevent evasions" of the Act. See 12 U.S.C. 1844(b). As the Board itself recognized, it "does not have the discretion to find that [petitioner's] proposal falls within the prohibitions on interstate acquisitions contained in Section 3(d) of the Act (12 U.S.C. § 1842(d)), which only applies to the acquisitions of banks as defined in section 2(c) of the Act." Pet. App. A20.

Notably, the Board now seems to welcome the court's expansion of its powers. It argues that if these "nonbank banks" are not banks under the Act, "the companies that own them can avoid the restrictions of the Act against conflicts of interests, concentration of resources, and excessive risk" (page 5, *supra*). However, this statement is plainly wrong under the facts of this case. U.S. Trust Corporation is a bank

The court, as well as the Board, must give effect to the language of the BHCA until Congress chooses to amend the Act. See, *e.g.*, *Chevron U.S.A. Inc.* v. *NRDC*, No. 82-1005 (June 25, 1984), slip op. 4; *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 68 (1982).[11] The court's perception of the need to regulate the recent expansion of interstate financial institutions (see Pet. App. A6, A13) cannot justify judicial amendment of longstanding legislation. See *United States* v. *Lorenzetti*, No. 83-838 (May 29, 1984), slip op. 11; *Morrison-Knudsen Construction Co.* v. *Director, Officer of Workers Compensation Programs*, 461 U.S. 624, 635 (1983); *Potomac Electric Power Co.* v. *Director, OWCP*, 449 U.S. 268, 279-280 (1980). The court of appeals has expanded the

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holding company, and its Florida subsidiary would be subject to the proscriptions against such adverse consequences whether it is treated as a bank or a nonbank institution under the BHCA. Indeed, the provisions of the BHCA dealing with nonbank subsidiaries of bank holding companies require that those subsidiaries have a reasonable expectation of producing public benefits, "such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as *undue concentration of resources, decreased or unfair competition, conflicts of interests,* or *unsound banking practices.*" 12 U.S.C. 1843(c)(8) (emphasis added). See Pet. App. A23. Even if an existing bank holding company were not involved and the BHCA were not applicable, the institution would be extensively regulated under other applicable laws by its chartering and insuring agencies. See Brief for the United States As Amicus Curiae at 4 n.3, *Board of Governors* v. *Dimension Financial Corp.*, No. 84-1274.

[11] Notably, Congress is presently contemplating changes in the reach of the BHCA. See, *e.g.*, H.R. 20, 99th Cong., 1st Sess. (1985) (reported to the full House June 18, 1985); S. 2851, 98th Cong., 2d Sess. (1984) (passed by the Senate Sept. 13, 1984).

Board's statutory authority beyond the bounds that even the Board itself found appropriate under the present statute. The decision here is clearly contrary to the plain language of the BHCA and should be reversed.

CONCLUSION

In the opinion of the Federal Reserve Board, the petition should be held pending resolution of *Board of Governors* v. *Dimension Financial Corp.*, No. 84-1274. In the opinion of the United States, the petition for writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1985

☆ U. S. GOVERNMENT PRINTING OFFICE: 1985 461531 20008